

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRYAN SMITH,	:	4:CV-04-1746
Plaintiff	:	(Judge McClure)
v.	:	(Magistrate Judge Smyser)
JO ANNE B. BARNHART,	:	
Commissioner of Social Security,	:	
Defendant	:	

ORDER
May 11, 2005

BACKGROUND:

The plaintiff has brought this civil action under the authority of 42 U.S.C. § 405(g) to obtain judicial review of the decision of the Commissioner of Social Security denying the claim of the plaintiff for Social Security disability insurance benefits.

The case was initially referred to United States Magistrate Judge J. Andrew Smyser.

Magistrate Judge Smyser filed an eleven page report and recommendation on April 21, 2005. He concluded with the recommendation that the case be remanded to the Commissioner for further consideration of the plaintiff under Listing 1.04 A, consideration of Dr. Cartaginise's opinion without assuming a motivation on the

Doctor's part that lacks evidentiary support, and consideration of the plaintiff's credibility that is framed in terms of the truthfulness of things that he has said.

On May 10, 2005, the Commissioner waived the opportunity to object to the report and recommendation.

The court agrees with the analysis of the magistrate judge and his recommendation and will order a remand.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The report and recommendation of United States Magistrate Judge J. Andrew Smyser (record document no. 14, filed April 21, 2005) is approved and adopted in full for the reasons set forth therein.
2. The case is remanded to the Commissioner of Social Security for additional consideration of the plaintiff under Listing 1.04 A, consideration of Dr. Cartaginise's opinion without assuming a motivation on the Doctor's part that lacks evidentiary support, and consideration of the plaintiff's credibility that is framed in terms of the truthfulness of things that he has said.
3. The clerk is directed to close the case file.

s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge